

CARRIAGE OF MAIL ON VESSELS OF U.S. REGISTRY

MAY 14, 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 188]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 188) to further the development and maintenance of an adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of U.S. registry, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 188, as reported, would add a new section to title IV of the Merchant Marine Act, 1936, that requires the Postal Service to use vessels of U.S. registry, if available, to originate any international sea transportation of mail.

BACKGROUND AND NEEDS

A general requirement that U.S. mail carried by vessel be transported on U.S.-flag ships first appeared in law in 1920 (41 Stat. 998). That requirement was continued in the Merchant Marine Acts of 1928 and 1936. The provisions of the 1920 and 1936 acts remained in force until 1960 when Congress passed a complete revision of the Post Office's statutes in title 39 of the United States Code (49 Stat. 1985). This revision included a provision very similar to section 405(a) of the Merchant Marine Act, 1936, requiring U.S. mails to be carried by U.S.-flag ships.

In 1970, Congress again passed a complete revision of title 39 creating the U.S. Postal Service (Public Law 91-375). It did not contain a provision comparable to the previous U.S.-flag preference. No explanation for this omission was provided in either the Senate or House committee reports (S. Rept. 91-912; H. Rept. 91-1104). However, the Postal Service continued the policy by a regulation in the Postal Contracting Manual.

In 1981, the Postal Service deleted this regulation from the manual with no notice or hearing. This action terminated the longstanding policy of the Government to entrust the U.S. mail to American carriers. Since that time, the carriage of U.S. mail by ship has been dominated by foreign-flag operators including Soviet bloc ships. The committee finds that reinstatement of the U.S.-flag preference will enhance the objective of the Merchant Marine Act, 1936, to foster the development and encourage the maintenance of the U.S. Merchant Marine.

The Postal Service estimates that it would have spent an additional \$1,400,000 if this bill had been enacted for fiscal year 1983. This estimate is based on an average differential between bids submitted by U.S.-flag and foreign-flag carriers.

LEGISLATIVE HISTORY

S. 188 was introduced by Senator Inouye on January 26, 1983. Hearings were held on the bill on September 27 and 29, 1983, by the Committee on Commerce, Science, and Transportation. Witnesses included the U.S. Postal Service, the Maritime Administration, major U.S. shipping companies, Shipbuilders Council of America, Marine Engineers Beneficial Association, Maritime Trades Department of the AFL-CIO, and the U.S. Chamber of Commerce. The committee also received several written statements for the record. On April 10, 1984, the committee ordered S. 188 reported with an amendment in the nature of a substitute.

SUMMARY OF THE BILL

As reported, S. 188 would:

1. require the use of vessels of U.S. registry to originate any international sea transportation of U.S. mail;
2. require contracts for carriage of mail by vessels of U.S. registry to be competitive and limited to 1 year; and
3. prevent the Postal Service, with minor exception, from contracting for the use of cargo containers on the basis of container size.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act

of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 8, 1984.

HON. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 188, a bill to further the development and maintenance of an adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of U.S. registry, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 10, 1984.

We expect that enactment of this bill could cost the U.S. Postal Service [USPS], an off-budget agency of the Federal Government, an additional \$5 million to \$6 million annually. Any increase in cost to the USPS would ultimately be recovered by increases in postal rates.

Based on 1983 data from the Postal Service, the average differential between the bids made by vessels of the U.S. registry and foreign vessels was 38 percent, and total shipping expenses were approximately \$15 million. Although the cost of shipping mail, primarily packages and catalogs, is expected to increase annually, the volume of this category of mail is decreasing, suggesting a relatively constant annual expense for this purpose for the next several years. As a result, if the Postal Service were required to use U.S. vessels exclusively when available, the Postal Service would likely incur additional costs in the range of \$5 million to \$6 million annually, assuming that bids would average about 38 percent higher than would otherwise have been the case. The cost would be borne primarily by mailers and would be reflected in an increase in postal rates. The Federal Government, as a mail user, would be required to pay higher postage rates as well, but that amount is not likely to be significant.

Enactment of this legislation is not expected to result in any significant costs to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Enactment of S. 188 would bring rates charged by U.S. shipping companies for carriage of U.S. international mail under regulation by

the Federal Maritime Commission [FMC]. However, current FMC regulations exempt contacts for carriage of mail in the foreign commerce from tariff filing requirements.

The role of the FMC will largely be limited to investigating violations of the Shipping Act of 1984 upon complaint or its own motion. Given the small number of contracts and the competitive award process, it is likely that S. 188 will have a negligible regulatory impact.

NUMBER OF PERSONS COVERED

All U.S. ocean common carriers are presently regulated by the Shipping Act of 1984. S. 188 will not increase the number of persons covered by the act.

ECONOMIC IMPACT

S. 188 imposes little, if any, additional duty on the FMC or places no new burdens on ocean common carriers.

PRIVACY

S. 188 will have no effect on the privacy of individuals affected by the bill.

PAPERWORK

No additional reporting requirements are imposed by regulating international mail contract rates under the Shipping Act of 1984.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 adds a new section 405 to the Merchant Marine Act, 1936.

Proposed section 405(a) requires the Postal Service to contract for the use of vessels of U.S. registry to originate the international transportation of U.S. mail if the vessel operator provides regular transportation services to the specified destination. The Postal Service is not required to enter into such contracts if there are no available vessels or if these vessels cannot provide service sufficient to meet the actual needs of the Postal Service. Actual needs are those terms and conditions of service which are reasonable in light of commercial practice within a given trade.

Proposed section 405(b) requires that rates for carriage of mail under subsection (a) must comply with the provisions of the Shipping Act of 1984, which provides for a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States. A U.S. ocean carrier may not charge a higher rate for carrying the mail than it charges for carrying like goods for private persons. The committee notes that mail, particularly fourth-class mail, can be a heterogeneous commodity. Therefore, the term "like goods" refers to cargoes of similar but not necessarily identical characteristics. This provision is not intended to set a carrier's "not otherwise specified" tariff as the rate ceiling for the carriage of mail.

Proposed section 405(c) requires that contracts under subsection (a) be awarded by competitive bidding. The committee intends that the term "competitive bidding" include both advertised bids and negotiated contracts. Contracts are limited to a 1-year duration. These requirements are limitations placed on the Postal Service's broader grant of contract authority found at 39 U.S.C. 5605.

Proposed section 405(d) precludes the Postal Service from contracting for the use of cargo containers on the basis of container size, unless required by the physical handling limitations of the destination.

Proposed section 405(e) contains a definition of "common carrier".

SECTION 2

Section 2 exempts section 405 of the Merchant Marine Act, 1936, from a provision in title 39, United States Code, which makes public or Federal contract laws not applicable to the Postal Service.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman) :

THE MERCHANT MARINE ACT, 1936

TITLE IV OF THAT ACT

SEC. 401.-SEC. 404. * * *

SEC. 405. (a) The Postal Service shall contract for the use of vessels of United States registry to originate any international sea transportation of mail of the United States in any case in which the common carrier which operates or controls such vessel is engaged in the provision of regular transportation services to the destination specified by the Postal Service. The Postal Service shall not be required to enter into any such contract if no such vessels are available at the time the Postal Service seeks to arrange for the transportation of such mail, or if no such vessels can provide service sufficient to meet the actual needs of the Postal Service.

(b) Any rate charged for the international sea transportation of mail of the United States under subsection (a) of this section shall comply with the provisions of the Shipping Act of 1984 (Public Law 98-237). Any such rate shall not be higher than rates charged by such carrier for transporting like goods for private persons.

(c) Notwithstanding any other provision of law, in any case in which two or more common carriers seek to enter into a contract offered by the Postal Service under subsection (a) of this section, the Postal Service shall award such contract by competitive bidding and the duration of any such contract may not exceed 1 year.

(d) The Postal Service shall not give any preference to any common carrier for the carriage of mail by sea based upon the basis of length, height, or width of cargo containers. Unless required by the

physical handling limitations of the destination, no invitation for bids or request for proposals for the carriage of mail may specify the use of containers of any particular length, height, or width.

(e) For purposes of this section, the term "common carrier" means any common carrier, other than any ferryboat running on regular routes, engaged in the transportation by water of passengers or property between the United States (or any of its districts, territories, or possessions) and any foreign country, whether in the import or export trade, except that a cargo boat commonly referred to as an ocean tramp shall not be considered to be a common carrier.

TITLE 39, UNITED STATES CODE

Section 410 of that title

§ 410. Application of other laws

- (a) * * *
- (b) The following provisions shall apply to the Postal Service:
- (1)-(8) * * *
- (9) *Section 405 of the Merchant Marine Act, 1936, as amended.*





